

LEGISLATION AND PUBLIC
EDUCATION COMMITTEE

BILL ANALYSIS

ard	Author	Bill Number
California Integrated Waste Management Board	Strom-Martin	AB 705
Sponsor	Related Bills	Date Amended
Californians Against Waste	AB 84 (Woods), AB 228 (Midgen)	April 2, 1997

SUMMARY

AB 705 would require state government agencies to develop an integrated waste management program similar to those required to be adopted by cities, counties and regional agencies. It would also include building and construction materials, outdoor furniture, and landscaping materials within the definition of recycled products for purposes of procurement requirements by the Legislature and state agencies, and contractor certification of materials for state jobs. In addition, it would also reenact provisions of law which required all state agencies to purchase certain recycled products if they meet quality and cost considerations.

BACKGROUND

The sponsor of this measure, Californians Against Waste (CAW), wants to ensure that state government agencies do their fair share to contribute to California's recycling and waste reduction requirements. In recent court cases, some state agencies have argued that they cannot be required to implement recycling programs as part of the efforts to comply with the Integrated Waste Management Act (Act). The most notable case involved Pelican Bay State Prison where the courts ruled that because state agencies were not specifically referenced in the Act, they cannot be required to comply with the Act or with local ordinances pertaining to recycling and waste management. The bill is intended to provide a statutory framework within which state agencies may comply with the Integrated Waste Management Act.

The sponsor also believes reinstating provisions relating to the purchase of recycled lubricants, antifreeze, solvents, and paints, and adding provisions relating to the purchase of recycled building and construction products, outdoor furniture, and landscaping materials will enhance the state's recycled product procurement program.

The CIWMB initiates and coordinates a comprehensive statewide waste reduction and recycling program for all state offices and institutions. The Project Recycle program conducts evaluations of materials discarded by state agencies; provides training materials and

Departments That May Be Affected		
All state agencies, departments, commissions and boards		
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instruction, as well as desktop and intermediate metal collection containers; purchases other equipment for the safe collection of recyclables; and assists with arrangements for the sale of collected materials. As of March 1997, Project Recycle works with programs at 1200 state offices and facilities. During 1996, 28,672 tons of material were collected from state facilities. The CIWMB's Buy Recycled Campaign assists procurement officers at the state's Department of General Services (DGS), other state agencies, local governments and businesses in buying recycled-content products. These include recycled-content paper and plastics, re-refined petroleum, retreaded tires, lead-acid batteries, paint and solvents, glass products, paving materials, and compost products.

Governor Wilson's April 10, 1991 Executive Order W-7-91 requires all State agencies to implement a number of specific practices to reduce waste, reuse materials, recycle, and procure products made with recycled content to help reduce the amount of solid waste going to landfills. The CIWMB and the Department of Conservation (DOC) were also directed to conduct five waste audits at state agencies to determine waste reduction opportunities. The Department of General Services (DGS) is required to develop policies and guidelines for implementing the Executive Order and conduct ongoing educational and training sessions for state agencies, postsecondary education institutions, and local government procurement offices.

In June 1991, an Executive Task Force on Waste Reduction and Recycling was formed to implement the Executive Order. In January 1992, the Task Force sent an advisory report to the Governor detailing existing problems and making recommendations to solve these problems. Some of the recommendations in this report are similar to the legislation proposed in AB 705.

RELATED BILLS

AB 84 (Woods) would implement a pilot program for state agencies to provide price preferences for products manufactured with residues from agricultural cropping activities. AB 84 would define "products manufactured with residues from agricultural cropping activities" to include, but not be limited to, copy paper, stationery, newsprint, cardboard, fiberboard, pallets, sheeting, boards, tiles, insulation, and compost. AB 84 was set to be heard by the Assembly Appropriations Committee on April 2, 1997, but the hearing was put over.

AB 228 (Midgen) would include the Office of State Printing (OSP) in the Department of General Services (DGS) and any other state agency determined by the CIWMB to conduct any printing or publishing operation within the definition of "consumer of newsprint," for purposes of the recycled-content newsprint program administered by the CIWMB. Additionally the bill would include legislative intent that all state agencies, including the OSP, are subject to the recycled-content newsprint requirements and should do everything possible to achieve and exceed those requirements. AB 228 was set to be heard by the Assembly Appropriations Committee on April 2, 1997, but the hearing was put over.

EXISTING LAW

State Law:

1. Establishes a comprehensive program, administered by the CIWMB, for the management of solid waste in California (Public Resources Code [PRC] §40000, et al.).
2. Requires cities and counties to prepare, submit to the CIWMB for review, and implement plans for the diversion of 25% of solid waste disposed by 1995 and 50% by the year 2000 (PRC §40900-41460).
3. Establishes various recycled product purchase and procurement requirements for state agencies (Public Contract Code [PCC] §12150-12320).

ANALYSIS

AB 705 would:

1. State legislative intent that the State Agency Integrated Waste Management Program will clearly identify the responsibility of state agencies to develop waste reduction and recycling programs and to comply with the diversion requirements of the Act;
2. Add building and construction materials, outdoor furniture, and landscaping materials to the list of materials, goods and supplies, or products containing recycled resources and meeting the specified recycled content requirements for purposes of procurement requirements by the Legislature and state agencies and contractor certification of materials for state jobs;
3. Reinstate, until January 1, 2001, requirements that all state agencies purchase rerefined automotive lubricants, recycled antifreeze fluid, recycled solvents, and recycled paints, as long as the cost is not more than 5 percent greater than the same nonrecycled products, and fitness and quality are equal;
4. Require each state agency, or or before April 1, 1998, to conduct a waste audit to determine the amount of solid waste that it generates and the amount that can be reduced, reused, and recycled;
5. Require each state agency, on or before June 1, 1998, to develop an integrated waste management program for reducing, reusing, and recycling solid waste;
6. Require each state agency to designate at least one waste coordinator who shall be responsible for implementing the agency's integrated waste management program;
7. Require the CIWMB to provide technical assistance to state agencies for the implementation of #3 and #4 above;

8. Require each state agency, by January 1, 1999, to divert at least 25% of its waste from landfill or transformation facilities, and by the year 2002, to increase diversion to 50%;
9. Authorize each state agency to utilize previous initiated diversions to meet the bill's diversion requirements;
10. Mandate procedures to ensure that the facilities for storage, collection, and centralized pickup of recyclable materials are available to each state agency; and
11. Define "state agency" as every state office, officer, department, division, board, commission or other agency of the state.

COMMENTS

STATE AGENCY INTEGRATED WASTE MANAGEMENT PROGRAM

Necessity of bill. A question might be raised about whether the State Agency Integrated Waste Management Program is needed on the scale proposed in this bill. The CIWMB estimates that state facilities generate less than 1% of the state's waste. At present, Project Recycle, the state's in-house waste reduction program, assists 1200 state facilities and is increasing the number of waste reduction programs by 100-150 programs per year. At this rate, in five years nearly half of all state facilities will have at least waste paper recycling programs and nearly all of the large facilities will have waste reduction programs. In addition, similar bills to AB 705 have been introduced three times since 1992. The Governor vetoed the first bill, the second bill was dropped, and the third bill failed passage in its first committee (see Legislative History section of this analysis).

Potential benefits. This proposal has the potential to benefit all parties with a vested interest in diverting waste from California landfills. Cities and counties would have assistance in meeting their diversion mandates because the state would no longer be exempt. The CIWMB would have statutory backing for other agencies to accept its waste diversion programs and assistance.

Cost. Currently, state agencies are not required to develop or implement a comprehensive integrated waste management program. Executive Order W-7-91 requires all state agencies to provide for collection and recycling of the typical containers, paper, cardboard, etc, and the CIWMB operates its Project Recycle program for state agencies which primarily focuses on recycling. AB 705 requires the CIWMB to provide technical assistance to state agencies to help them develop integrated waste management programs. The CIWMB would need to develop a model waste management program, review numerous integrated waste management programs, and train agencies in implementing these programs. It would be very expensive to small departments, as well as to the CIWMB, to review these programs. In addition, waste audits can be expensive and it could be difficult to obtain qualified personnel to conduct them. Instead of waste audits, AB 705 could be amended to require waste generation information of the facility obtained by extrapolating existing waste generation information from known facility types to similar state facilities generating similar waste.

Timelines. Under AB 705, state agencies are required to complete and submit their waste audits to the CIWMB by April 1, 1998. The state agencies are to develop, in consultation with the CIWMB, an integrated waste management program by June 1, 1998. As a practical matter, once the bill becomes effective, January 1, 1998, the CIWMB should provide, at a minimum, waste audit training to all state agencies to ensure uniformity. In addition, a considerable CIWMB staff effort would be required to assist the state agencies in developing their programs during the two-month period between April 1, 1998 and June 1, 1998. Effectively, AB 705 requires each state agency to meet the same standard that is required of local jurisdictions in only four years, whereas the locals have close to ten. This raises the question of how successful state agencies will actually be. Instead of the four year deadline, AB 705 could be amended to move the dates to a more appropriate timeline.

Cost savings. AB 705 states that any cost savings as a result of a state agency's implementation of the program shall, to the extent feasible, be redirected back into the program to fund program implementation and administration costs. However, existing law requires revenues from the sale of recyclables to go back to the Integrated Waste Management Account (IWMA) (PCC §12167). In addition, there is currently a provision that allows each state agency to seek approval from the CIWMB to retain up to \$2,000, and to spend revenues in excess of \$2,000 if appropriated by the Legislature (PCC §12167.1). AB 705 is unclear in that it may contradict these provisions. AB 705 could be amended to make it clear as to whether revenues would continue to come to the IWMA.

Definition of "state agency." The definition "state agency" in the bill is unclear as to whether it is applicable to all quasiautonomous agencies and the University of California, California State Universities, and community colleges, and could be amended to be more clear.

BUY RECYCLED

Material vs. application. AB 705 proposes to revise procurement by state agencies, the Legislature, and contractor certification of materials for state jobs by adding three types of products -- building and construction materials, outdoor furniture, and landscaping materials -- to the 11 product categories already identified. Although these types of recycled content products should be purchased by state agencies, it seems unnecessary to specify these products. The current 11 product categories are defined by the type of material they are made from (paper, plastic, glass, etc.). The proposed categories are defined by the application or use of the product. This could cause great confusion because many products could be categorized by material type and by application. For instance, a plastic lumber bench could be reported under the plastic category or the outdoor furniture category. This would make reporting by all state agencies and management of the State Agency Buy Recycled Campaign (SABRC) very difficult. If the proposed language stays in the bill, definitions of building and construction materials, outdoor furniture, and landscaping materials would be needed. For example, it could be made clear through an amendment whether the landscape materials category means compost, soil amendments, and additives.

Price preference. AB 705 reintroduces a code section related to state agency purchase of rerefined automotive lubricants, recycled antifreeze fluid, recycled solvents, and recycled

paints, as long as the cost is not more than 5 percent greater than the same nonrecycled products, and fitness and quality are equal. Since the CIWMB no longer has the pilot preference funds, it cannot make up the difference. The individual procuring agency would be responsible for paying the the premium.

LEGISLATIVE HISTORY

AB 705 was introduced on February 26, 1997. It passed the Assembly Consumer Protection, Governmental Efficiency, and Economic Development Committee (11-1) on April 8, 1997, and was referred to the Assembly Appropriations Committee (no date set).

Support: Californians Against Waste (sponsor)
 Louisiana Pacific
 Browning Ferris Industries
 California Landscape Contractors
 California Refuse Removal Council
 E-Coat Recycled Paint (Division of Kelly-Moore Paints)
 City of San Rafael
 County of Santa Clara
 Norcal Waste Systems, Inc.

Opposition: None received

AB 705 is similar to AB 3285 (Davis) of 1996, AB 1902 (McPherson) of 1995, and AB 3689 (Gotch) of 1992. AB 3285 failed passage in the Assembly Natural Resources Committee. Assemblyman McPherson dropped AB 1902 after it reached the Assembly Appropriations Committee. The California Integrated Waste Management Board (CIWMB) took no position on AB 3285 and AB 1902. The CIWMB supported AB 3689, but it was vetoed by the Governor. In his veto message, the Governor stated that the bill was duplicative of administrative efforts and "does not offer state government the flexibility it needs to meet our challenging, yet realistic, recycling goals."

FISCAL AND ECONOMIC IMPACT

AB 705 would impost costs of \$267,500 (5.35 PY) in FY 97-98 (6 months), \$535,000 (5.35 PY) in 1998-99, and \$250,000 (2.5 PY) for annual ongoing costs from the Integrated Waste Management Account (IWMA).

These costs would be for technical assistance to state agencies as they develop and implement their integrated waste management program, and for developing the waste audit. In addition, they would cover the costs the CIWMB would incur to develop its own integrated waste management program, and do its own diversion calculations. Finally, they would cover the costs of revision of the State Agency Buy Recycled Campaign packet (SABRC), outreach and presentation forms, certification, and reporting forms. After the first year and one-half (1997-98 and 1998-99), costs would be expected to drop due to the completed development of each state agency's integrated waste management program and waste audit, and revisions to SABRC materials.

Although unclear, it is possible that if AB 705 is interpreted to override provisions of current law regarding revenues from the sale of recyclables coming back to the IWMA, it could cause a significant, undetermined decrease in funds to the IWMA.

As a result of the successful diversion of solid waste from California's landfills, the CIWMB is experiencing declining revenues due to decreased tipping fees. For this reason, less money is available to implement CIWMB programs. Enactment of this legislation could result in less funding for other vital CIWMB programs.

Local agencies may lose revenues if state agencies do not participate in efforts to reduce or recycle solid waste.